

**Town of Lincoln**

**100 Old River Road, Lincoln RI**

**Zoning Board of Review**

**September 3, 2006 Minutes**

**Present: Raymond Arsenault, Kristen Rao, Gabriella Halmi, Jina Karempetsos, Arthur Russo, Jr., David Gobeille, Town Solicitor Jack Gannon**

**Excused: Nicholas Rampone**

**Chairman Arsenault introduced Attorney Jack Gannon as the Board Counsel.**

### **Minutes**

**Chairman Arsenault asked if there any corrections to the August 1, 2006 Minutes. Motion made by Member Rao to accept the Minutes as presented. Motion seconded by Member Halmi. Motion carried with a 5-0 vote.**

### **Correspondence**

**Walter J. and Joanne A. Matisewski, 16 Tricia Circle, Cranston, RI – Special Use Permit for a two sided 4'x6' professional sign to be located at 1011 Smithfield Avenue, Lincoln, RI.**

**AP 6, Lot 385 Zoned: RG 7**

**Chairman Arsenault read into the record letter from applicants asking**

that their application be withdrawn without prejudice. Motion made by Member Karempetsos to accept applicant's request to withdraw their application without prejudice. Motion seconded by Member Gobeille. Motion carried with a 5-0 vote.

### **Applications**

**A.F. Homes, P.O. Box 2312, Pawtucket, RI – Application for Use Variance to convert vacant existing mill building into 48 condominium units on property located at 90 Industrial Circle, Lincoln, RI  
AP 2, Lot 82 Zoned: MG 0.5**

**Represented by: Eric Bransky, Esquire**

**Applicant would like to request a continuance to the October agenda because of a notice problem to William J. Rose, Jr. and Alexia Alfieri. Applicant wishes to correct this deficiency and re-notice those abutters only so they can be given proper notice.**

**Chairman Arsenault informed the Board that the Planning Board was unable to render a recommendation at their September meeting on this application and he recommended the application be continued.**

**Motion made by Member Halmi to continue the application to the October agenda. Motion seconded by Member Rao. Motion carried with a 5-0 vote.**

**BCO, Inc., 89 Central Street, Manville, RI – Special Use Permit to**

**maintain existing 2-family dwelling, demolish the garage and construct 5 additional town house style units on property located at 74-76 Main Street, Lincoln, RI.**

**AP 35, Lot 10 Zoned: RG 7**

**Represented by: John Shekarchi, Esquire**

**Chairman Arsenault read into the record a faxed Request/Motion for Continuance of Hearing from Nancy E Milos, LLP dated September 1, 2006 asking for a one month continuance allowing remonstrant James and Muriel Haller and their new attorney time to prepare their case and to retain the services of an expert. Attorney originally hired by remonstrant withdrew from the matter because of a conflict of interest.**

**Russell Hervieux, Zoning Official informed the chairman that he received the fax on September 5th and spoke with the attorney for remonstrant. There was a significant notice issue at the July meeting which he discussed with Attorney John Shekarchi who submitted a complete new list of abutters. There was a problem with the Town Hall's computers and out of an abundance of caution Attorney Shekarchi sent out a second mailing to the Lincoln Post Office and Manville Post Office. He did receive returns from the Lincoln Post Office which did not match the field cards. Two notices sent through the Manville Post Office were returned.**

**Remonstrant represented by Attorney Frank Miles. He received a call from remonstrant late Thursday afternoon after he found out the attorney he had originally represented, Attorney Michael Horan, had a conflict of interest with this application. He met with Mrs. Haller on Friday and they were unable to properly prepare their presentation were unable to retain expert witness for tonight's meeting because of time constraints. Attorney Miles feels he needs time to prepare and would ask this Board to continue the application to the October agenda. This is the only opportunity they will have to make their case and if an appeal is taken without expert testimony it would jeopardize their case.**

**Attorney Shekarchi submitted into evidence a list of Manville abutters within a 200' radius and Tax Assessor cards as Exhibit #1. It's not the neighbor's attorney position to ask for a continuance and has an obligation to present their case. Applicant's traffic expert is not available in October. They are sensitive to remonstrant and are prepared to go forward this evening.**

**Attorney Miles is asking for a continuance so he can properly prepare his case and secure expert witnesses. Chairman Arsenault recommended that a motion be made continuing the application to October to be heard on a special date other than the scheduled October 3rd meeting because the agenda was full. Both attorneys agreed they would be ready to present their case on October 24th.**

**Motion made by Member Gobeille to continue the application for a special hearing on October 24th. Motion seconded by Member Halmi. Motion carried with a 5-0 vote.**

**Michael Joinville, 100 Church Street, Manville, RI – Dimensional Variance for front yard setback to rebuild porches.**

**AP 37, Lot 177 Zoned: RG 7**

**Member Gobeille recused himself from this application with Member Russo sitting with full privileges.**

**This application was continued from the August agenda because of a notice issue. Applicant informed the Board that his wife spoke with Russell Hervieux, Zoning Official who instructed her on how to access the town hall computer records to obtain the names of persons paying taxes on property located at 403 Old River Road. Mrs. Cheryl Joinville addressed the Board and confirmed what applicant had stated.**

**The town records listed one mailing address as Old River Road and another as 403 Old River Road. She mailed notices out and they were not returned. Chairman Arsenault then stated that the notice issue had been resolved.**

**Chairman Arsenault read into the record standards which need to be met for a Dimensional Variance.**

**Applicant stated that porches at the site had been covered and enclosed about 35 years ago when his father owned the house. The porches are in poor condition and need to be replaced. Porches are currently being used for storage. When they came in to pull a permit they were informed they needed a dimensional variance. House is located on a paper street high on a hill. Because the house is on a paper street access is from Central Street. Submitted into the record correspondence from 3 neighbors who have no objection to his proposal (Exhibit #1). Second floor porch will be insulated with no heat. First floor porch will be used by his mother to sit outside. Entire house will be resided and roofing will match. Existing porches will be completely demolished and rebuilt. Footings are crumbling and will be replaced.**

**Russell Hervieux, Zoning Official confirmed that this is a corner lot. The lot on the radius map which applicant supplied is a copy of what is on the Assessor's map. The definition in the Zoning Ordinance calls for the shortest frontage to be the frontage of a lot. Applicant is now seeking a rear yard setback and changed his application to reflect same.**

**Chairman Arsenault read into the record Planning Board recommendation:**

**Members of the Technical Review Committee visited the site and reviewed the submitted plans and application. The TRC recommends denial of the application for a dimensional variance. The Committee**

feels that the application does not meet any of the standards for relief of a dimensional variance as presented in the Zoning Ordinance. More specifically, the TRC feels that the porches appear to be enclosed living rooms. If this is the case, the application does not represent the least relief necessary and is not due to the unique characteristics of the subject land. The TRC feels that the applicant has sufficient room to the side of the property to locate an addition without having to request a variance.

Motion made by Member Russo to grant a 19 foot rear yard setback with a condition that the Assessor's Plat as shown in Town Hall is correct and accurate as applicant testified. He further stated:

- The hardship from which the applicant seeks is due to the unique characteristics of the subject land or structure and not due to the general characteristics of the surrounding area and is not due to a physical or economic disability of the applicant.
- The hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain.
- The granting of this variance will not alter the general character of the surrounding area or impair the intent or purpose of the Lincoln Zoning Ordinance or the Lincoln Comprehensive Plan.
- The relief requested is the least relief necessary.
- The hardship amounts to more than a mere inconvenience, meaning there is no other reasonable alternative to enjoy a legally permitted beneficial use of the property

**Motion seconded by Member Halmi. Motion carried with a 5-0 vote.**

**Jonathan & Christine Hill, 12 Birch Street, Manville, RI – Dimensional Variance for side yard setback.**

**AP 35, Lot 38 Zoned: RL 9**

**Chairman Arsenault read into the record standards that need to be met for a Dimensional Variance.**

**Witnesses:**

**Applicant and Francis J. Hill (Father)**

**Applicant is seeking a 16.5 foot side yard setback. House was built in 1955. Land was split and he thought he had 135' frontage when in fact he has 130'. He went to Superior Court to dispute property line and recently received a consent decree. Chairman Arsenault questioned that it was not signed by a judge and applicant replied the form as presented was what he received from the court. Father stated the developer, Town and Planning Board each received a copy. Applicant feels it gives him the right to come forward for a variance. When the survey was recorded that is when they lost the 5 feet and put him out of code. Chairman asked Attorney Gannon for clarification of the consent decree. Property is a corner lot on a dead end street with a walkway leading to Northern Elementary School.**

**Chairman Arsenault read into the record Planning Board**



**recommendation:**

**Members of the Technical Review Committee visited the lot and reviewed the submitted plans and application. The proposed dimensional variance is to clear up the pre-existing non-conformance of this parcel of land. This lot and existing building was platted and developed before present day zoning regulations. The Technical Review Committee recommends approval of this application. The TRC finds that the relief requested will not alter the general character of the surrounding area or impair the intent or purpose of the Lincoln Zoning Ordinance or the Lincoln Comprehensive Plan.**

**Motion made by Member Gobeille to grant a 16.5 foot side yard setback with a condition that applicant shall submit to the Town a certified signed copy of the Consent Decree from Superior Court. He further stated:**

- The hardship from which the applicant seeks is due to the unique characteristics of the subject land or structure and not due to the general characteristics of the surrounding area and is not due to a physical or economic disability of the applicant.**
- The hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain.**
- The granting of this variance will not alter the general character of the surrounding area or impair the intent or purpose of the Lincoln Zoning Ordinance or the Lincoln Comprehensive Plan.**
- The relief requested is the least relief necessary.**

- **The hardship amounts to more than a mere inconvenience, meaning there is no other reasonable alternative to enjoy a legally permitted beneficial use of the property**

**Motion seconded by Member Karempetsos . Motion carried with a 5-0 vote.**

**Motion made by Member Rao to adjourn the meeting. Motion seconded by Member Halmi. Motion carried with a 5-0 vote.**

**Respectfully submitted,**

**Ghislaine D. Therien**

**Recording Secretary**